

Testimony of
Michael P. Judge

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United States Senate
Committee on the Judiciary

Hearing on "Strengthening Our Criminal Justice System: The John R. Justice Prosecutors and
Defenders Incentive Act of 2007"
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Thank you Senator Durbin, Chairman Leahy, Senator Specter, and members of the Committee for having me here today to talk about the John R. Justice Prosecutors and Defenders Incentive Act.

I am in my 38th consecutive year as an attorney practicing in the field of criminal law in the State of California, including 13 years as the Chief Public Defender of the Los Angeles County Public Defender's Office, the largest and oldest local Public Defender's Office in the nation.

I appear before you today representing the California Council of Chief Defenders, the California Public Defenders Association (an organization comprised of almost 4,000 criminal defense attorneys), the American Council of Chief Defenders of which I am a founding member, and the National Legal Aid and Defender Association.

The critical issue that prompts us to address you is the deteriorating capacity of local criminal justice systems to effectively provide essential public safety protections and assure integrity and accuracy in outcomes for your constituents.

There is now an unprecedented dangerous situation in which recruiting and retention of qualified prosecutors and defenders has been undermined by crushing student debt burdens that deter talented law school graduates, who otherwise would apply, from entering the field, and forces others who have been carefully selected and trained to resign upon attaining the skills necessary to properly handle the serious cases that are of the greatest concern to the communities we all serve.

I see this situation in defender offices throughout California. For example, 83% of California Chief Defenders surveyed reported that recruiting has been negatively impacted because of student loan burdens. The residents of Riverside County, California are saddled with 59 vacancies out of 149 authorized deputy public defender positions. In Los Angeles, the number of deputies citing financial reasons for their decision to leave the Public Defender's Office has

almost tripled in the past 3 years, and the number who reject job offers has increased by almost 2½ times in the past 3 years.

Why are we in this situation? In part, it is because tuition and expenses for undergraduate programs and law schools have exploded, rising far more rapidly than other costs of living. The San Francisco Chronicle reported on February 18, 2007, that the total cost of an undergraduate education at Stanford University has risen to approximately \$49,000 per year. It should be noted that tuition alone for in-state students at public law schools in California such as U.C.L.A. now exceeds \$25,000/year. Nationally, the American Bar Association Commission on Loan Repayment and Forgiveness, in a report published in 2003, found that between 1992-2002 the cost of tuition for public law schools increased 134% whereas the cost of living went up 28%.

The ABA report also established that 87% of law students borrowed to finance their legal education, and that the amount borrowed doubled during the 1990's. Therefore, it should come as no surprise that a survey conducted by the California Public Defender's Association in November 2006 disclosed that the average student debt load for California defenders who graduated in the past 4 years exceeded \$93,000.

As a result of these financial barriers, the ABA reported, high student debt bars many law graduates from pursuing public service careers. Moreover, many graduates who take public service jobs must leave after they gain 2 to 3 years of experience. The ABA concluded that public service employers are experiencing serious difficulty recruiting and retaining lawyers, and that repayment assistance programs help law graduates to take and keep public service jobs

Private firms can afford to pay salaries sufficient to account for such debt and other living expenses. The Los Angeles Daily Journal reported on January 25, 2007, that the "going rate" offered by law firms to first year associates (brand new lawyers) had been raised to \$160,000.00/year. That is close to triple what most local prosecutor and public defender offices are likely to offer. There is no reason to expect the compensation for such public safety lawyers to increase by an appreciable amount. Instead, there are prosecutor and defender offices who are suffering from vacancies. That places pressure on such offices to lower their standards, risking botched prosecutions or inept defending, neither of which is acceptable to local communities.

We know that prosecutor offices throughout California and across the country are also facing recruitment and retention problems. Jim Fox, President-elect of the National District Attorney's Association, revealed that vacancies in prosecutor offices are likely to result in the filing of more, rather than less criminal cases.

At first blush that seems counterintuitive, but Mr. Fox explained that with insufficient staff prosecutors have less time to thoroughly screen cases, and instead of demanding additional investigation at the outset or rejecting a filing, the cases are filed to avoid the possibility of a guilty perpetrator going free, with the expectation that the matter will be sorted out later.

Such an increase in criminal case filings puts more pressure on defender offices. In the absence of lowering standards within defender offices to fill vacancies, such defender programs would be obligated to divert clients to appointed private counsel to avoid an excessive workload. In my experience, such a diversion produces unacceptable capriciousness in the quality of

representation, generates complaints from clients, their families, public officials and judges. Moreover, it also causes significant increases in costs.

There is of course one other disagreeable possibility. Some defender offices with deficient staff may not divert the cases but instead undertake excessive workloads, resulting in an increase in the conviction of the innocent and substantial delays in case processing. This causes some persons accused of crimes to languish and suffer in custody well beyond the juncture their cases should have been resolved, causing unnecessary human misery and exorbitant costs of detention and liability to local communities.

Conversely, prosecutor offices with vacancies face the likelihood of otherwise valid cases being dismissed due to speedy trial violations, cases being settled on much more lenient terms than normally warranted and cases being lost due to insufficient time and resources to properly prepare.

The John R. Justice Prosecutors and Defenders Incentive Act tightly defines a distinct limited group of lawyers essential to both public safety and confidence in the criminal justice system, which is of high value to local communities and their residents. Public defenders stand together with prosecutors in support of this legislation, and we hope that it will pass the Senate and be enacted into law.

Thank you again for the opportunity to testify today. I would be happy to answer any questions you have.